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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/054,538	10/25/2001	Brian Robert Simpson	CAF-19103/03	7183

7590 11/19/2003
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EXAMINER
TARAZANO, DONALD LAWRENCE

ART UNIT	PAPER NUMBER
1773	

DATE MAILED: 11/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/054,538

Applicant(s)

SIMPSON ET AL.

Examiner

D. Lawrence Tarazano

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-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 04 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 10-14 is/are rejected.
- 7) ☒ Claim(s) 8, 9, and 15- 20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☒ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☒ Certified copies of the priority documents have been received in Application No. 08/703,028.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1-7, 10 and 11-13 are rejected under 35 U.S.C. 102(e) as being anticipated by Betso et al. (5,576,374).
3. Betso et al. teach a blend of substantially linear ethylene / alpha olefin copolymer, a second olefin polymer, and filler. The substantially linear ethylene / alpha-olefin copolymer is made by Dow's constrained geometry catalyst system (column 4, lines 45-57). This corresponds to the materials used by applicants. Betso et al. teach that these materials are extruded (column 9, lines 49+) and recite, "single ply roofing" as one of the forms. While the applicants claim the instant materials as being flooring. The examiner takes the position that the single ply roofing material taught by the prior art corresponds to the claimed sheet material. The material of the

prior art has the capability of functioning as a polymeric floor covering and therefore meets the applicants' intended use of the material. Regarding the processing conditions, the materials are compounded at temperatures above 75 deg C as claimed and can be extruded and formed into sheets (single ply roofing). It is understood to those having ordinary skill in the art that the extrusion of the polymer mixture would occur at elevated temperatures and that the formed sheet would be hot when it comes out of the extruder and then would cool. It would be very difficult if not impossible to form a sheet out of the composition without melting the composition and then cooling it after the sheet was formed.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Betso et al. (5,576,374).

6. Betso et al. are silent regarding the processing condition used to make extruded structures (column 9, lines 38-53); however, the materials are compounded at a temperature above 75 deg C as claimed. Regarding the limitation that the compounding / melting point is done without degradation of the mixture, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have chosen the processing temperature such that the

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polymers did not degrade since degrading the polymers during processing would produce a product with inferior / degraded properties.

Regarding the limitation that the mixture is formed into a sheet and then allowed to cool. Betso et al. teach that the sheet structures such as roofing membranes are produced and teach that extrusion may be use to form articles. The examiner takes the position that following the formation of sheets by extrusion of hot polymer blend, the sheet would cool as claimed.

The polymer composition may contain processing additives such as anti-block additives.

Response to Arguments

1. Applicant's arguments see Paper 6, filed 9-4-2003, with respect to the combination of Thompson and Betso have been fully considered and are persuasive. The rejection of the claims under this combination of references (number 7) has been withdrawn.
2. The applicant's terminal disclaimer has been made of record and the rejection of the claims based on the US Patent 6,287,706 have been overcome.
3. The rejections based on Betso et al (5,576,374) have been maintained. The applicants have alleged that the patent contained new matter and that the original disclosure did not support the features, which the examiner has relied upon.
4. The examiner has reviewed the applicants' arguments. While the applicants have listed a number of facts based on the prosecution history the patent, the examiner feels that the prosecution history of the patent is not relevant to the prosecution of this application. All US patents have a presumption of validity.

5. Claims 8, 9, and 15- 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

1) **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. Lawrence Tarazano whose telephone number is (703)-308-2379. The examiner can normally be reached on 8:30 to 6:00 (off every other Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul J Thibodeau can be reached on (703)-309-2367. The fax phone numbers for the organization where this application or proceeding is assigned are (703)-872-9310 for regular communications and (703)-872-9311 for After Final communications.

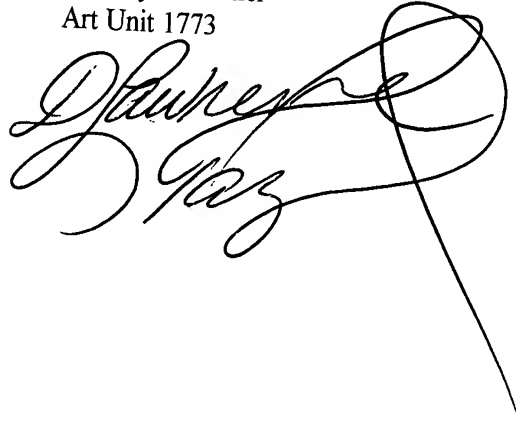
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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-308-0661.

D. Lawrence Tarazano
Primary Examiner
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A handwritten signature in black ink, appearing to read 'D. Lawrence Tarazano', with a long, sweeping line extending from the bottom right of the signature.

dlt
November 14, 2003